



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10**

1200 Sixth Avenue, Suite 155
Seattle, WA 98101-3123

**ENFORCEMENT &
COMPLIANCE ASSURANCE
DIVISION**

AUG 13 2019

Reply To: 20 – CO4

CERTIFIED MAIL — RETURN RECEIPT REQUESTED

Mr. David Duvick
Governor
Ecolab, Inc.
c/o CT Corporation System
Registered Agent
711 Capital Way S, Suite 204
Olympia, Washington 98501-1267

Re: NOTICE OF VIOLATION

Ecolab, Inc. 401 East Alexander Avenue, Lot #1, Tacoma, WA 98421
EPA ID No. WAH 00005 6860

Dear Mr. Duvick:

This Notice of Violation (NOV) is to inform Ecolab, Inc. (Ecolab) of violations of the Washington State Hazardous Waste Management Act as authorized by the U.S. Environmental Protection Agency (EPA) pursuant to the Resource Conservation and Recovery Act (RCRA). As described below, Ecolab has transported, and treated “dangerous waste” without following required procedural and permitting requirements applicable to those activities. These violations were identified as a result of an inspection performed by the Washington State Department of Ecology (Ecology) on April 23, 2019, at the Ecolab facility located at 401 East Alexander Avenue, Lot #1, Tacoma, WA 98421 (the “Tacoma Facility”).

Background

As EPA understands it, Ecolab provides fumigation services to the food industry, including vessels carrying commodities overseas and food processing plants throughout the United States. Among other things, Ecolab and/or its subsidiary, Food Protection Services, place Weevil-Cide, whose active ingredient is aluminum phosphide, in food storage areas. After the Weevil-Cide is used for its intended purpose, it becomes a spent material within the meaning of RCRA, and the residue may resemble ash (“Spent Weevil-Cide”).

During the April 2019 inspection, Ecology learned that Ecolab’s Tacoma Facility also provides pesticide waste management services, including transportation and deactivation (dry and wet) of the Spent Weevil-Cide. The inspection revealed that it is common practice for Ecolab to receive and manage Spent Weevil-Cide (aluminum phosphide ash/residue) for storage, treatment and disposal.

Ecology also learned that the Tacoma Facility has occasionally received from the manufacturer, shipments of discarded, unused Weevil-Cide (“Waste Weevil-Cide”) that was damaged during

shipment, which Ecolab stores, treats and/or disposes of. The Waste Weevil-Cide is a P006 and D003 dangerous waste pursuant to WAC-173-303-081.

On or about March 19, 2019, Trevor Goldsberry, an Ecolab employee, removed approximately 177.5 pounds of Spent Weevil-Cide from the vessel M/V Vigorous in Longview, Washington. This Spent Weevil-Cide was placed in two dry deactivation containers at Ecolab's Tacoma Facility. At approximately 17:09 on Tuesday, March 19, 2019, the Tacoma Fire Department responded to a fire incident associated with the two dry deactivation containers. According to Ecology's spill response report, the Spent Weevil-Cide reacted with water in the air to produce hydrogen phosphide (phosphine) gas, which ignited spontaneously.

The Spent Weevil-Cide was a solid waste that exhibited the characteristic of reactivity because it reacted violently with water, therefore was a reactive dangerous waste pursuant to 40 C.F.R. §261.23(a)(7) [WAC-173-303-090(7)] with the dangerous waste number of D003. (Note: because Ecolab's subsidiary Food Protection Services initially collected the Spent Weevil-Cide, by which dangerous waste requirements applied to the waste, Food Protection Services was a "co-generator" of this dangerous waste.)

Violation 1: Failure to obtain an EPA transporter ID number

The regulation at WAC 173-303-060 provides that any person who transports dangerous waste must have a current EPA/state identification number (EPA/State ID#) for that activity.

On or about March 19, 2019, Ecolab Inc. transported Spent Weevil-Cide, a D003 dangerous waste, from the vessel M/V Vigorous in Longview, Washington to its Tacoma Facility. Ecolab Inc. did not have an EPA/State ID#, therefore violated WAC 173-303-060.

Violation 2: Receiving dangerous waste from offsite generators without a permit

The regulation at WAC 173-303-600(2) provides that only permitted facilities which treat, store, or dispose of dangerous waste, and/or owners or operators of a facility which recycles dangerous waste in compliance with subsection (5) of that section, can receive dangerous waste from off-site sources, unless exempted by subsection (3) of that section.

On March 19, 2019, Ecolab's Tacoma Facility received Spent Weevil-Cide, a D003 dangerous waste, generated aboard the vessel M/V Vigorous in Longview, Washington. Further, Ecolab's Tacoma Facility has received Waste Weevil-Cide that had been damaged during shipment, a P006 and D003 dangerous waste, for storage, treatment and/or disposal by Ecolab.

The Tacoma Facility is not a permitted treatment, storage or disposal facility, nor does it recycle dangerous waste in compliance with WAC 173-303-600(5), nor was it otherwise exempted by WAC 173-303-600(3).

Ecolab's receipt of D003 and P006 dangerous wastes from off-site sources at its Tacoma Facility for storage and treatment therefore constituted separate and distinct violations of WAC 173-303-600(2).

Violation 3: Storing and/or treating dangerous waste without a permit

The regulation at WAC 173-303-800 requires the owner/operator of a dangerous waste facility that stores and/or treats dangerous waste to obtain a permit. "Storage" means the holding of dangerous waste for a temporary period. "Treatment" means the physical, chemical, or biological processing of dangerous waste to make such wastes non-dangerous or less dangerous, safer for transport, amenable for energy or material resource recovery, amenable for storage, or reduced in volume, with the exception of compacting, repackaging, and sorting as allowed under WAC 173-303-400(2) and 173-303-600(3).

On March 19, 2019, approximately 177.5 lbs of Spent Weevil-Cide was placed in two dry deactivation containers at the Tacoma Facility. The dry deactivation was performed in two 55-gallon metal containers, with holes located near their bottom, and with customized lids to aid in the dry deactivation of aluminum phosphide ash/residue. The Spent Weevil-Cide was placed in the dry deactivation containers to react with ambient air to make it less dangerous prior to disposal, which constituted both storage and treatment.

Further, during the inspection it was revealed that it is common practice for Ecolab to store and treat both Spent Weevil-Cide pellets and Waste Weevil-Cide ash/residue by the use of wet deactivation. In this process, pellets (P006 dangerous waste) and ash/residue (D003 dangerous waste) are removed from the dry deactivation process and placed in a 55-gallon open-top container containing a 2% soap/surfactant solution. This process is intended to make the waste(s) non-dangerous or less dangerous constitutes both storage and treatment of dangerous waste.

At the time of the April 23, 2019, inspection, the Ecology inspector observed three poly International Bulk Containers (IBC) – 275 gallon containers with the tops removed. The three IBC containers held punctured aluminum phosphide flasks. The three IBC containers each contained approximately 75 flasks.

According to Michael Carette-Meyers, Ecolab Regional Manager, the aluminum phosphide flasks are emptied when Weevil-Cide pellets are deployed at a fumigation serviced location. The empty flasks are not rinsed or otherwise cleaned upon being emptied. At the Tacoma Facility, the lids are removed from the flasks, and the flasks are punctured so that they cannot be reused. The punctured flasks are then placed in the open-top IBC containers and allowed to react and off-gas. A single-gas meter is then used to determine if the flasks are finished off-gassing before transporting the flasks offsite for scrap metal recycling. The punctured flasks are not triple-rinsed prior to shipping offsite for recycling.

Flasks which originally contained Weevil-Cide aluminum phosphide, but have not been triple rinsed, are a P006 dangerous waste pursuant to WAC-173-303-081(c). Management of dangerous waste flasks in open-top IBC containers in the manner observed by Ecology constitutes both storage and treatment of dangerous waste.

Ecolab's Tacoma Facility does not have a permit authorizing it to store or treat dangerous waste. Ecolab therefore violated WAC 173-303-800 by storing and treating dangerous waste as described above.

Required Action

The above violations may subject Ecolab, Inc. to enforcement action under Section 3008 of RCRA, including the assessment of civil penalties. EPA requests that if you wish to dispute any of the findings in this Notice of Violation or otherwise respond to this Notice of Violation, that you provide a written response within **no later than twenty (20) days of receipt** of this NOV. You may include a description and/or photographs that identify actions you have taken or intend to take to correct the violations.

Please send all material submitted in response to this NOV to Xiangyu Chu by email at chu.xiangyu@epa.gov or:

Ms. Xiangyu Chu
U.S. Environmental Protection Agency
RCRA Enforcement Unit
1200 Sixth Avenue, Suite 155, M/S: 20-C04
Seattle, Washington 98101

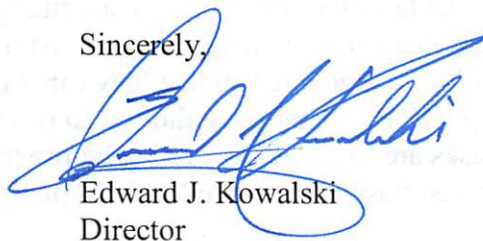
EPA Reservation of Rights

Notwithstanding this NOV or your response, the EPA reserves the right to take any action pursuant to RCRA or any other applicable legal authority, including but not limited to an enforcement action for penalties or a compliance order. Your response to this NOV does not constitute compliance with RCRA nor the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

Nothing in this NOV or your response shall affect duties, obligations or responsibilities with respect to Ecolab under local, state, or federal law or regulation.

Thank you for your prompt attention to this important matter. If you have questions regarding this NOV, please contact Xiangyu Chu of my staff at (206) 553-2859 or chu.xiangyu@epa.gov.

Sincerely,



Edward J. Kowalski
Director

cc: Michael Carette-Meyers
EcoLab, Inc.

Ron Kaufmann
Washington Department of Ecology

Leslie Morris
Washington Department of Ecology